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NO. 80-6073

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1980

ROBERT M. GROOMS,
Petitioner

vs.

C. WHITNEY SLABAUGH,
MICHAEL A. COSENTINO,
R. TERRY SNYDER, and
DAVID PETGEN,
Respondents

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTION PRESENTED

WHETHER POLICE OFFICERS SHOULD BE SUBJECTED TO LIABILITY UNDER SECTION 1983, TITLE 42, UNITED STATES CODE, IN THE ABSENCE OF EVIDENCE TO CONTRADICT THEIR CLAIM TO GOOD FAITH BELIEF IN THE CONSTITUTIONALITY OF THEIR ACTIONS.

OPINIONS BELOW

JURISDICTION

These respondents are satisfied with the presentation of these items by Petitioner.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondents are satisfied with the provisions as set out by Petitioner, except that Respondents set forth in their Appendix to this brief Indiana Code, Sections 18-1-11-4 and 18-1-11-8.

STATEMENT OF THE CASE

On December 2, 1974, Robert Grooms was arrested by Snyder and Petgen. This arrest was a result of an investigation into an armed robbery which had occurred on November 30, 1974, and a homicide which had occurred on December 1, 1974. (R. 59-60). There were approximately twenty-five (25) law enforcement officers involved in this investigation with Snyder heading the Elkhart County Police investigation and Petgen heading the Indiana State Police investigation. (R. 74). Petgen believed that there was probable cause to arrest Grooms and Grooms acknowledges the fact that there was probable cause for this arrest. (R. 68 and 206).

Also on the evening of the arrest a pick-up truck belonging to Grooms was impounded at the request of Petgen. (R 64). Grooms' pick-up was parked on a public street and although Grooms claimed that the pick-up belonged to him, a license check revealed that the vehicle was registered to someone else. This improper registration, coupled with

Petgen's belief that the victim of the homicide had been in the pick-up with Grooms was the basis for the impound request. (R. 64-65). Petgen contacted the Indiana State Police Post at Ligonier, Indiana and requested that the post contact Trooper Thomas Malone, an assistant lab technician, to make an inventory search of the vehicle. (R. 72). Trooper Malone was contacted by the Indiana State Police Post and told to conduct an inventory search. (R. 53). Malone in fact conducted an investigatory search. (R. 55). Malone did not have personal contact with Petgen or Snyder until after his search of the truck. (R. 50, 51).

Grooms claims that he was held incommunicado for the first two and one half days of his detention. (Petition for Cert. p. 4) The transcript shows that Grooms made one request for a phone call to Petgen and Snyder at the time of his arrest and was told that he could make a phone call when he got to the county jail. (R. 189). On one other occasion Grooms asked an unknown person for a telephone call. (R. 190).

Grooms acknowledged that he was represented by Attorney Jerry Virgil beginning on the evening of his arrest. (R. 203, 204) Prior to this time Attorney Virgil had represented Grooms on at least two prior occasions and believed that he had an ongoing professional relationship with Grooms. (R. 234). On December 4, 1974, Attorney Virgil spoke with an Elkhart deputy prosecuting attorney, Michael Cosentino, to attempt to work a plea bargain on behalf of Grooms. (R. 213). An arrangement was made between the deputy prosecuting attorney and Attorney Virgil pursuant to which Grooms was to give a complete statement concerning the homicide and the armed robbery, submit to a polygraph examination concerning those statements, and was to be immune from prosecution for

the armed robbery in the event he passed the polygraph. (R. 223).

In the early morning hours of December 5, 1974, Attorney Virgil confirmed the arrangement with the deputy prosecuting attorney and went to the Elkhart County Security Center where Grooms was being held. (R. 214). Attorney Virgil discussed this arrangement with Grooms who understood the arrangement and agreed to go along with it. (R. 201-202).

Grooms was not available for the first criminal court session on Thursday, December 5, 1974, since on that day he was transported to Chicago to the Keeler Polygraph Institute, where he took a polygraph examination. (R. 42).

One of Grooms' principal complaints was that he was not taken to court until a grand jury was impaneled on December 11, 1974. (R. 205-206). Much testimony was presented concerning the procedures followed by the courts in Elkhart County as they related to the filing of criminal charges and the first appearance of a criminal defendant in court. Although preliminary hearings could be held at other times, the universally accepted practice by all Elkhart County courts was to hold hearings on all criminal felony matters once a week, on Thursdays. (R. 112). In cases involving felonies other than first degree murder, the arresting officer would present his reports and other information to the prosecuting attorney who would decide whether a charge should be filed and in what court the charge should be filed. The prosecuting attorney would then prepare and file an information and probable cause affidavit. (R. 241). The Honorable Charles Hughes, who was judge of the Elkhart Superior Court at the time of Grooms' arrest, testified that

a person who had been arrested was never brought to court until the information had been filed by the prosecuting attorney, that it was up to the prosecuting attorney to start the process and that police officers had nothing to do with the filing of charges and the setting of times for prisoners' appearances in court. (R. 120, 122-124). Both Snyder and Judge Hughes testified that in 1974 prisoners were never brought to Court unless a prosecutor was present and after the information and affidavit to show probable cause had been filed. (R. 140, 242).

At the time in question all first degree murder charges were brought by indictment rather than by the filing of information by the prosecutor. (R. 124-125, 157, 172). In 1974, a person to be charged with first degree murder was not brought before a magistrate until after the grand jury had met and returned an indictment. (R. 159). The prosecuting attorney in first degree murder cases would ask the judge of the Elkhart Superior Court, in this case the Honorable Charles Hughes, to assemble a grand jury. When that request was made, as in this case, on a Monday, the grand jury could generally not be assembled until Wednesday or Thursday. (R. 133).

At the time in question all of the witnesses, including the then judge of the Elkhart Superior Court; the present judge of the Elkhart Superior Court, who at the time of Grooms' arrest was a public defender; the current judge of the Elkhart City Court who was also a public defender at the time of Grooms' arrest; and Grooms' attorney at the time of his arrest, Jerry Virgil, believed that the procedures as outlined above and followed by the courts in Elkhart County were lawful. (R. 141, 160, 167, 230). Petgen testified

that had procedures for an immediate preliminary appearance been available and customary at the time that he would have taken Grooms before a magistrate. (R. 77). Snyder testified that he did not take Grooms before a magistrate between December 2 and December 11, 1974, because it was not standard procedure to do so and because Snyder believed that an officer could not take a person to court without the prosecuting attorney having first prepared and filed the proper paperwork. (R. 82, 85). Thus, at the time in question, it was not unusual for a person to be charged with first degree murder to be held in jail for nine or ten days pending the calling of a grand jury, the submission of the case to the grand jury, and the return of an indictment. (R. 67, 86).

The grand jury in the Grooms case was impaneled on December 11, 1974, and returned an indictment on December 12, 1974, and Grooms was brought to Court on both dates. The grand jury returned an indictment of first degree murder and Grooms was subsequently convicted of that offense. (R. 206-207).

Between the date of the arrest and the impaneling of a grand jury, Petgen had no personal contact with Grooms. (R. 75). After the date of the arrest, all of Snyder's dealing with Grooms were through his attorney. (R. 86). Grooms did not ask to appear before a court at any time prior to December 11, 1974. (R. 91). Grooms' attorney did not request that Grooms be taken immediately before a magistrate because of the arrangement which had been made between the deputy prosecuting attorney and himself for Grooms to be taken to Chicago for a polygraph. (R. 230). Grooms testified that he did not know that he had the right to have a probable cause preliminary hearing. (R. 192).

Testimony concerning two Indiana statutes was presented, and over the objection of Snyder, Petgen was questioned concerning his familiarity with Indiana Code, Section 18-1-11-8 concerning persons detained after being arrested by city police officers. (R. 57-58). In addition, both Snyder and Petgen testified that they were familiar with the meaning of Indiana Code, Section 35-4-1-1 dealing with an alternate procedure for preliminary charges and appearances before magistrates of persons charged with crime. (R. 58-59, 82). The Honorable Donald Jones, currently judge of Elkhart Superior Court, who was a public defender in December, 1974, testified that this statute was only applicable if the person detained specifically raised a defense such as excuse, or alibi, and that in his extensive experience he had only seen the statute used on one occasion. (R. 161-162). This interpretation was shared by the Honorable David Denton, currently judge of Elkhart City Court, who was a public defender in December, 1974. (R. 173). No evidence was presented to show that Grooms had offered any explanation, justification, alibi, excuse, or circumstance which might have negatived his presence or participation in the crime in question.

With respect to damages, the Honorable Charles Hughes testified that a person convicted of a crime in Indiana would be entitled to receive credit on his sentence for a crime for the time served from the date of his arrest to the date of sentencing. (R. 131). At the time of the arrest and detention in question, Grooms was unemployed and no evidence concerning any loss of income was presented. (R. 182). Grooms acknowledged that he had not been subject

to any physical abuse or injury during the period of his detention and that he had suffered no mental suffering or nervous problems as a result. (R. 205-206). No evidence was presented to show what, if any, injury was suffered by Grooms as a result of the search of his pick-up which was returned to him. (R. 72).

No evidence was presented to show the existence of any aggravating circumstances or to show the existence of malice on the part of Snyder and Petgen. Respondents are satisfied with the remainder of Petitioner's Statement of the Case.

REASONS FOR DENYING THE WRIT

The decision of the Court of Appeals for the Seventh Circuit is not in conflict with the decision of any other federal court of appeals nor did it decide a federal question in a way in conflict with applicable decisions of this court. Further, this case does not involve an important question of federal law which has not been, but should be, settled by this court. Thus this case does not fall within the general considerations governing review on certiorari as set forth in Rule 17 of this court.

Petitioner contends that the Court of Appeals for the Seventh Circuit awarded good faith immunity to police officers for acts which violated well established state law. (Petition p. 6). Instead, the court of appeals correctly applying the principles of Pierson v. Ray, 386 U.S. 547 (1967), held as a matter of law that the constitutional standards first established in Gerstein v. Pugh, 420 U.S. 103 (1975) could not, as a matter of law, be the basis for liability in this case. The Court of Appeals noted that

> A crucial element of defendants' defense in this case is therefore that Gerstein v. Pugh, which was decided after the events in question, established rights not previously clear to defendants and police officers generally. It is worth noting that this evalution of Gerstein's place in the development of constitutional law appears to present only a question of law... (Petitioner's App. 8).

The court of appeals did not hold that police officers are entitled to good faith immunity for acts which violate well established state law. Instead, the court of appeals followed the holding of the Indiana Court of Appeals in Grooms v. Fervida, 396 N.E. 2d 405 (1979) that Indiana Code, Section 18-1-11-8, which required that city police officers take a person arrested without a warrant before a magistrate within twenty-four (24) hours, did not apply to the state and county officers involved in this case. With respect to the other state statutes involved, the Court of Appeals correctly noted that:

> The evidence that defendants believed these statutes were applicable and acted in direct contravention of them was speculative, whereas the evidence that they acted in reliance on local procedures was overwhelming. (Petitioner's App. p. 10).

ARGUMENT

POLICE OFFICERS SHOULD NOT BE SUBJECTED TO LIABILITY UNDER 42 U.S.C. SECTION 1983 IN THE ABSENCE OF EVIDENCE TO CONTRADICT THEIR CLAIMED GOOD FAITH BELIEF IN THE CONSTITUTIONALITY OF THEIR ACTIONS.

This brief will not deal with the matters raised in Argument I of the Petition for Certiorari as the matters raised therein are not applicable to these Respondents. The issues raised in Argument II, III, and IV have been rephrased as the Petitioner has inaccurately presumed that the Respondents violated well established state law, that the holding of the Seventh Circuit Court of Appeals was based on a reevaluation

of conflicting evidence contrary to a jury verdict, and that these Respondents violated Petitioner's Fourth Amendment rights.

At trial and on appeal to the Seventh Circuit Court of Appeals, Grooms based his cause of action on an alleged violation of his constitutional right to a probable cause hearing as set forth in Gerstein v. Pugh, 420 U.S. 103 (1975) and on an alleged violation of his right to be taken before a magistrate within twenty-four (24) hours of his arrest as provided by Indiana Code §18-1-11-8. Grooms' petition does not seek review of the holding of the Seventh Circuit Court of Appeals that:

> The Gerstein result simply comes too late to effect the disposition of a case based on these 1974 events. It is essential to consider the decisions at issue here as they were understood at the time they were made, and until Gerstein the decision to keep a suspect confined was regarded in many areas, including Elkhart County, as a decision for the prosecutors to make. .... A crucial element of defendants' defense in this case is therefore that Gerstein v. Pugh, which was decided after the events in question, established rights not previously clear to defendants and police officers generally. It is worth noting that this evaluation of Gerstein's place in the development of constitutional law appears to present only a question of law... (Petition App. 7, 8).

At the time of the filing of the Petition for Rehearing with the Seventh Circuit of Court of Appeals, Grooms finally conceded that Indiana Code §18-1-11-8 was inapplicable to his case. This concession cannot undo the fact that Grooms presented testimony to the jury, argued to the jury, and had the jury instructed concerning this statute. (R. 57, Supplemental R. 47, R. 309). All of these actions were taken with the obvious intention of convincing the jury that the police officers violated his constitutional rights

and also violated state law by failing to take him before a magistrate within twenty-four (24) hours of his arrest. Having purposefully misled the jury as to a law in order to obtain a verdict in his favor, Grooms now argues that the jury's verdict constitutes a finding of bad faith as a matter of fact.

Grooms argues that Respondents clearly violated state law and thus even though they did not violate Grooms' clearly established constitutional rights, that they are not entitled to the defense of good faith. In support of this contention, Grooms cites two false imprisonment cases decided under Indiana law. Harness v. Steele, 64 N.E. 875 (1902), Matovina v. Halt, 123 N.E. 2d 893 (1955). However, the holding of this court in Baker v. McCollan, 443 U.S. 137 (1979) makes it clear that 42 U.S.C. §1983 only imposes liability for violations of constitutional rights which had been authoritatively declared at the time of the action complained of and does not provide a remedy for claims of false imprisonment based on state tort law.

It is important to note that this case was not tried as a Section 1983 action with a pendent state false imprisonment claim. Grooms had already sought damages in state court alleging false imprisonment based on the same detention which was the subject matter of his action under 42 U.S.C. §1983 in federal court. In the state court false imprisonment action, Grooms failed to establish his right of recovery under Indiana law. Grooms v. Fervida, 396 N.E. 2d 405 (1979). Thus in essence, Grooms is now asking this court to impose liability under 42 U.S.C. §1983 in the absence of a violation of a clearly established constitutional

right and in the face of a determination by the Indiana Courts that no violation of Indiana law occurred with respect to Grooms' detention.

Grooms also cites Watts v. Indiana 338 U.S. 49 (1949), Nacoff v. State, 267 N.E. 2d 165 (1971), and Williams v. State, 348 N.E. 2d 623 (1976) in a further attempt to transform his alleged state law claims into a federal Section 1983 claim. Those cases all involve the question of the voluntariness of confessions which are the product of an illegal detention. These cases are simply not relevant to the case now at hand inasmuch as there was no evidence that the detention of Grooms was for the purpose of extorting an involuntary confession. Further, the cases of Williams v. State, supra and Dommer v. Hatcher, 427 F. Supp. 1040 (N.D. Ind. 1975), were decided in reliance upon this court's decision in Gerstein v. Pugh, supra. Thus as with Gerstein v. Pugh, supra, these cases simply come too late to effect the disposition of this case.

Grooms claims that the Seventh Circuit Court of Appeals improperly weighed and reevaluated conflicting evidence with respect to his claim that Indiana Code, Section 35-4-1-1 was applicable to him. This is based on the claim that Grooms offered to take a polygraph test. The evidence showed that his purpose in agreeing to the plea bargain arrangement and to take the polygraph was to obtain immunity from prosecution for the armed robbery in return for giving information concerning that offense and a homicide. (R. 223). If in fact Grooms claimed that he offered an alibi, then he could surely have testified to such an offer of alibi. Instead, Grooms restricted his testimony concerning

the armed robbery charge to a concession that he did not dispute the existence of probable cause for that charge. (R. 206). There simply is no evidence in the record to support Grooms' belated claim of alibi to the armed robbery charge. Thus the Seventh Circuit Court of Appeals did not improperly weigh conflicting evidence but instead correctly noted that:

> The evidence that defendants believed these statutes were applicable and acted in direct contravention of them was speculative, whereas the evidence that they acted in reliance on local procedures was overwhelming. (Petition App. 10).

Grooms attempts to stand the case of O'Conner v. Donaldson, 422 U.S. 563 (1975) on its head. Grooms asserts that if reliance on state law establishes good faith, then a claimed violation of state law proves bad faith. This assertion is directly contrary to the holdings in Pritchard v. Downie, 216 F. Supp. 621 (E.D. Ark. 1963), aff'd. 326 F. 2d 323 (8th Cir. 1964) and Hamilton v. Chaffin, 506 F. 2d 904 (5th Cir. 1975). These cases held that alleged violations of state laws, which required that juveniles be immediately taken before a magistrate to be committed to police custody prior to detention, could not be the basis for recovery under 42 U.S.C. §1983. In addition the courts have consistently held that violation of other state laws relating to arrest, while perhaps providing a basis for a state cause of action for false imprisonment, do not provide the basis for liability under 42 U.S.C. §1983. Street v. Surdyka, 492 F. 2d 368 (4th Cir. 1974). Diamond v. Marland, 395 F. Supp. 432 (S.D. Ga. 1975). In a very similar case, the United States Court of Appeals for the Fifth Circuit held that a violation of state law, which required that a person be taken before a magistrate promptly after his arrest, does not provide the basis for recovery under 42 U.S.C. §1983. Perry v. Jones, 506 F. 2d 778 (5th Cir. 1975).

Grooms contends in Argument III of his petition that the Seventh Court of Appeals erred by substituting its judgment for the findings of the jury on disputed questions of fact. Grooms argues that the jury's verdict constitutes a finding of bad faith as a matter of fact and a finding that the police officers disregarded customary procedures, recklessly disregarded Grooms' clearly established constitutional rights, and that the police officers' testimony was not credible and that the jury did not find it so. This argument is disingenuous in light of the fact that the two primary grounds for plaintiff's cause of action, arguments, instructions to jury, and on appeal to the Seventh Circuit Court of Appeals, to-wit: the constitutional right to a probable cause hearing first clearly established in Gerstein v. Pugh, supra., and the requirements of Indiana Code §18-1-11-8, are now conceded by Grooms to be inapplicable to his case.

The Respondents do not claim that all aspects of the good faith defense present questions of law and the Seventh Circuit Court of Appeals did not so hold. However, in this case, as in Tritsis v. Backer, 501 F. 2d 1021 (7th Cir. 1974), the plaintiff failed to present any evidence to contradict the facts supporting the police officers' claim that they acted reasonably and in good faith.

The essential facts of this case are undisputed. All parties involved believe that the procedures followed with respect to preliminary hearings in Elkhart County were lawful. All witnesses, including the present and former judges of the Elkhart Superior Court, former public defenders and Grooms' own attorney, believed that the procedures were lawful. (R. 141, 160, 167, 230). There is no dispute concerning the reason why Grooms was not brought to court on

the first Thursday following his arrest on Monday. The evidence showed that the reason he was not brought to court on that first Thursday was because Grooms, through his attorney, in an attempt to obtain immunity from prosecution for armed robbery, entered into an agreement with the prosecuting attorney which required that he be in Chicago for a polygraph exam on that day. (R. 202, 223, 230).

Grooms contends that the fact that he was booked as "John Doe" and the fact that he was allegedly held incommunicado for two and one half days supports the conclusion that the police officers were not acting reasonably and in good faith. The record shows that Grooms made only one request for a telephone call of these Respondents, that he was told he could make a telephone call when he got to the county jail, that he made one other request of an unknown person for a phone call, that he was booked as "John Doe" upon the order of Sgt. Fervida, and that he had signed an affidavit stating that he was represented by an attorney from the night of his arrest. (R. 189, 190, 146, 203-204). This evidence does not support a conclusion that the respondents violated the constitutional rights of Grooms by any deviation from normal practice in these regards. Even if the evidence supported his claim that the these police officers were responsible for his complaints in these regards, the constitutional right which Grooms claims was violated, was the right to a probable cause hearing, and not the right to be booked as Robert M. Grooms, rather than as "John Doe".

Grooms argues that the award of punitive damages indicates that the jury found as a matter of fact that the police officers acted with reckless disregard for Grooms' rights. Grooms does not cite any portion of the record

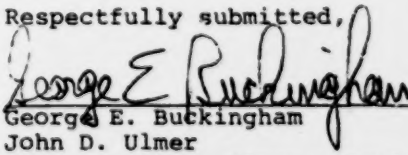
which would support a finding that these police officers knowingly or intentionally violated his clearly established constitutional rights, engaged in outrageous conduct, or were motivated by personal animus. There is thus no evidence to support that claim and no evidence to support the jury's award of punitive damages. Konczak v. Tyyrrell, 603 F. 2d 13 (7th Cir. 1979). The jury's verdict being contrary to law, on this issue, as to the other issues in the case, the court correctly held as a matter of law that the Respondents acted in good faith.

Grooms claims in Argument IV of his petition that the holding of the Seventh Circuit Court of Appeals denies Grooms all redress for the Respondents' violation of his Fourth Amendment rights. However, the holding of the Seventh Circuit Court of Appeals was based on the absence of any evidence in the record to support his claim that these defendants were responsible for the impermissibly broad search of Grooms' truck and that Grooms bore the burden of proof on this issue. (Petition App. 12). The Seventh Circuit Court of Appeals did not in any way restrict Grooms' right to recover from any police officers who were directly and personally involved in controlling the scope of the search.

CONCLUSION

For all of the reasons stated herein, the Respondents David Petgen and R. Terry Snyder respectfully request that Petitioner's Petition for Writ of Certiorari be denied.

Respectfully submitted,



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APPENDIX

Indiana Code, Section 18-1-11-4:

> The officers and members of the police force of every city shall possess all the common-law and statutory powers of constables, except in relation to the service of civil process; and any warrant of search or arrest, issued by any judge, or magistrate, or justice of the peace of this state, may be executed in any part thereof by any member of such police force, subject to the laws of this state governing arrest and bail. The members of such police force shall have the exclusive power, and it shall be their duty, to serve all process within such city issuing from the city court. They shall be conservators of the peace in such city, and shall arrest, without process, all persons who within view commit any crime of misdemeanor contrary to the statutes of this state or ordinances of such city, take them before the city court or judge of such city, or other officer having jurisdiction of the offense with which such person is charged, and retain them in custody until the cause of such arrest has been investigated, and shall surpass all breaches of the peace within their knowledge; and authority is hereby given them to call to their aid the power of such city, and to pursue and commit to jail all felons and persons guilty of misdemeanors of crimes in violation of the statutes of this state or of the ordinances of such city. They shall have the exclusive power, and it shall be their duty, to serve all process issued by the common council or any committee thereof, pursuant to this act, or by any of the executive departments of such city. They shall attend upon the city court and assist the bailiff to preserve order in such court. The members of the police force, under the direction of the chief of police, shall convey prisoners to and from the county jail or station-houses of such city for arraignment or trial in the city court, or to the house of correction, workhouse, reform school, county jail or other place of punishment or imprisonment, under judgment, sentence, order or process of such court. [Acts 1905, ch. 129, §161, p. 219]

Indiana Code, Section 18-1-11-8

> Whenever any arrest has been made by any member of such police force, it shall be the duty of the officer making the arrest forthwith to bring the person arrested before City Court, or a Court having jurisdiction of the offense, to be dealt with according to law. If the arrest is made during the hours when such Court is not in session, or if the Judge is not holding Court, such offender shall be detained in the City prison until there shall be an opportunity for such hearing at the earliest practicable time, or until he shall have given bond for his appearance. But no person shall be so detained longer than twenty-four (24) hours without such examination, except where Sunday intervenes, in which case no person shall be detained longer than forty-eight (48) hours.

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Respondents

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Please take notice that on February 19, 1981 we filed with the Clerk of the Court for the United States Supreme Court Respondents' Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit on behalf of Respondents, R. Terry Snyder and David Petgen, two copies of which are herewith served upon you.

The filing of this brief was made by mailing ten (10) copies to the Clerk of the Court. The Affidavit of George E. Buckingham is attached hereto.

George E. Buckingham

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AFFIDAVIT OF FILING BY MAIL

George E. Buckingham affirms under the pains and penalties for perjury that:

1. I am a member of the law firm of Yoder, Ainlay, Ulmer & Buckingham and am one of the attorneys representing Respondent R. Terry Snyder in this proceeding and I am a member of the bar of the Supreme Court of the United States.

2. On behalf of Respondents R. Terry Snyder and David Petgen, I have filed Respondents' Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit by depositing ten (10) copies in a United States mail box with first class postage prepaid and properly addressed to the Clerk of this court, on February 19, 1981.

3. To my knowledge, the mailing of the petition occurred as set forth.

George E Buckingham
George E. Buckingham

State of Indiana)
County of Elkhart) SS:

Before me, a Notary Public, in and for said County and State, personally appeared the above named George E. Buckingham and acknowledged the execution of the foregoing Affidavit of Filing by Mail this 19 day of February, 1981.

Bette H. Grant
Bette H. Grant, Notary Public
Residing in Elkhart County, Indiana

My Commission Expires:

October 30, 1982